

# KENTUCKY WORKERS COMPENSATION GUIDEBOOK

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COMMONWEALTH OF KENTUCKY

Brereton C. Jones, Governor

LABOR CABINET

Bill Riggs, Secretary

DEPARTMENT OF WORKERS CLAIMS

Walter W. Turner, Commissioner

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## **MESSAGE FROM THE COMMISSIONER**

The Department of Workers Claims presents the Kentucky Workers Compensation Guidebook. It is intended to assist laypersons in understanding the Workers Compensation Act and describe how it functions in the Commonwealth. A word of caution is in order. Accurate assessment of the rights of an injured worker in any particular case requires greater knowledge of the law than this book is intended to convey.

This Guidebook has been designed to answer many of the most frequently presented questions of citizens concerning their rights under the Workers Compensation Act. Should the reader not find an answer to a question in this Guidebook, help is still available. An Ombudsman office has been established within the Department to answer questions from the public. To contact an Ombudsman or to report fraud in the Workers Compensation program: call 1-800-554-8601 toll free.

Walter W. Turner  
Commissioner  
Department of Workers Claims  
October 1, 1995



# PREFACE



## COMMONWEALTH OF KENTUCKY OFFICE OF THE GOVERNOR

Dear Fellow Kentuckians:

The Kentucky Workers Compensation Act was enacted some eighty years ago based upon the promise that employees who were disabled by on-the-job accidents would receive wage replacement benefits and medical services to speed recovery. Over the last eight decades a large and complex workers compensation system has evolved from that law. Unknowns of the workers compensation system scare both employees and employers. This Guidebook explains, in understandable terms, important features of the compensation law and how the system functions. A better understanding of the system by workers and industry should produce less friction between the two when the system is used. In turn, that will help achieve the common goal of expeditiously delivering benefits where appropriate and restoring those who are injured to the job.

With best regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read "Brereton Jones".

Brereton C. Jones



Secretary Bill Riggs (L), Commissioner Walter W. Turner (C), Governor Brereton C. Jones (R), discussing Workers Compensation issues.



OFFICE OF THE GOVERNOR

and nothing is to be signed to the job

With best regards to  
all,  
Sincerely,  
G. C. Jones



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# **OVERVIEW OF WORKERS COMPENSATION**

## **1. Introduction: What is Workers Compensation?**

Workers compensation laws provide benefits to employees injured in job-related accidents. Benefits include payment of lost income, medical expenses, and new job training. If the accident causes the death of the worker, a burial allotment is paid and benefits are extended to the surviving spouse, children, and certain other dependents. Benefits are also provided for diseases which are acquired because of workplace exposure.

Workers compensation is described as a “trade-off” between labor and industry. In exchange for the protection granted by workers compensation, employees surrender the right to sue employers in civil court for damages.

## **2. Administration of the Workers Compensation Program**

Kentucky’s workers compensation program is administered by the Department of Workers Claims [DWC] within the Labor Cabinet. The Department is headed by a Commissioner appointed by the Governor. DWC employees perform many functions, including maintenance of records of reported injuries, the processing of claims and enforcement of provisions requiring employers to be insured.

## **3. Legal Framework**

The rights and duties of citizens concerning workers compensation are established by the General Assembly. Statutes are found in Chapter 342 of the Kentucky Revised Statutes (KRS) - the Workers Compensation Act. The law empowers the Commissioner to formulate regulations which guide the administration of claims and the delivery of medical and rehabilitation benefits. Statutes enacted by the legislature and regulations formulated by the Commissioner are subject to interpretation by the appellate courts.

Settlement of disputes between workers and their employers as to workers compensation benefits is encouraged. Contested claims are heard by Administrative Law Judges (ALJs) who are vested with authority to decide factual disputes and questions of law.

The decision of an ALJ may be appealed to the Workers Compensation Board. Further appeal may be taken to the Kentucky Court of Appeals and Kentucky Supreme Court.

#### **4. Fraud Initiative**

Kentucky actively investigates and prosecutes workers compensation insurance fraud. It is unlawful to knowingly make a misrepresentation of material fact to obtain benefits from the workers compensation program. Likewise, it is unlawful to misrepresent important facts in order to avoid responsibility under the law. Incidents of suspected fraud should be reported to a DWC Ombudsman. Call 1-800-554-8601. Violations may result in fines and criminal convictions.

### **COVERAGE, EXEMPTIONS AND REJECTION**

#### **5. Covered Employment**

Most Kentucky employers are subject to the Workers Compensation Act and must carry insurance or become self-insured, even if they only have one part-time employee. Exempted from mandatory coverage are: farm workers, domestic servants working in their employers' homes, people employed by homeowners for residential maintenance and repair, and employees protected by federal laws, including railroad and maritime workers.

Business partners who are true owners are not required to obtain coverage. True partners have an ownership interest in the business and a voice in its management. Absent the indicators of ownership, a worker will be considered an employee subject to coverage.

A frequently disputed issue is the distinction between an employee and an independent contractor. While an employee is covered by the Act, an independent contractor is not. The general test to determine the relationship is: Does the worker have the “right to control the details of the work?” An employee works under the direct control of an employer. An independent contractor is a skilled tradesman working on his own.

## **6. Rejection**

Employees are permitted to reject the provisions of the Workers Compensation Act and retain the right to sue employers for work-related injuries or disease. This can only be accomplished by signing a waiver - Form 4-Employees Notice of Rejection of the Provisions of the Act (commonly known as a “form 4 waiver”). The executed waiver must be filed with the DWC. It is unlawful for an employer to require an employee to sign a rejection as a condition of employment. Only “voluntary” waivers are to be granted legal effect.

Partnership, independent contractor and waiver provisions of the law have been widely abused by some employers to avoid the expense of obtaining workers compensation insurance. Cases have been reported where employers have falsely represented to employees that a sickness and accident insurance policy “is as good as workers compensation.” In truth, there is no alternative to mandatory workers compensation coverage.

## **7. Responsibility for Payment**

Employers are responsible for payment of benefits. Usually this is done through an insurance company providing workers compensation coverage. In some cases, a second injury fund known as the Special Fund also pays benefits. Finally, the Uninsured Employers Fund (UEF) will pay benefits if an employer is not insured. The UEF has the right to recover payments from the uninsured employer.

## **MANDATORY COVERAGE**

### **8. What Employers Need to Know**

Employers generally obtain workers compensation coverage by paying a premium to an insurance carrier in the "voluntary" market. Premium charges are based on such factors as the industrial job classifications of the business, the amount of payroll, and the loss history. Coverage may have been placed in the Assigned Risk Pool before August 31, 1995. This Pool provides coverage for employers not insured in the "voluntary" market and will be phased out by August 31, 1996. Kentucky Employers Mutual Insurance (KEMI) began providing coverage on September 1, 1995. KEMI is a competitive state fund which insures businesses previously located in the Assigned Risk Pool. It also writes policies in the "voluntary" market.

Some employers are insured by associations known as "self-insurance groups." A "self-insurance group" may offer its members a lower premium than charged by an insurance carrier in the "voluntary" market. However, in order to obtain coverage, an employer must be a group member and agree to be liable for assessments which may be necessary to pay the workers compensation losses of the group.

Major Kentucky employers may qualify to become individually self-insured. After demonstrating financial soundness to the DWC, these employers pay their own workers compensation losses and do not carry primary insurance coverage.

Penalties are imposed by the DWC against employers failing to obtain workers compensation coverage. Non-complying businesses may be closed by court action. These employers are subject to civil suits for workplace injuries.

Every employer pays the cost of the workers compensation program. An important factor in determining the premium paid by

the employer is the loss history of the business. Good safety, modified duty, return to work and managed care programs are effective in reducing workers compensation losses. Upon request from an employer, the insurance carrier must explain the reasons for modification of premium rates.

## **9. What Employees Need to Know**

Your employer is required to have compensation insurance or qualify as a self-insured. It is illegal to require an employee to pay any part of this cost. Some employers fail to observe the law and do not carry workers compensation insurance. Others enter into illegal schemes designed to make it appear that regular employees are independent contractors, partners or have rejected the benefits of the Workers Compensation Act. The best time to question whether an employer has workers compensation insurance is before an accident.

The Uninsured Employers Fund (UEF) has been established to pay workers compensation benefits to employees of uninsured employers. Unfortunately, the payment of lost wages and medical expenses in these cases will be delayed for many months during litigation. In the meantime, the worker may be without income and will encounter difficulty in obtaining medical treatment because bills will not be promptly paid.

## **10. Recommendations**

### **A. Do's & Don'ts for Employers**

1. Don't treat injured workers as if all of them are "fakers," too lazy to work. Most workers are honest and want to return to work as soon as possible.

2. Don't believe that your insurance carrier is going to solve your workers compensation cases alone. Establish lines of communication to track the status of injured workers. Encourage prompt payment of benefits when they are justly due.



3. Don't use workers compensation as a vehicle to rid your business of workers who are personnel problems.

4. Don't tolerate workers compensation fraud - report all suspicious activities to your insurance carrier and to the DWC!

5. Do cooperate with your carrier in developing a safe workplace and a modified duty program for impaired workers.

6. Do keep in contact with an employee who has been injured. Offer encouragement and a job within the employee's physical capabilities.

7. Do report every injury to your carrier immediately and make sure the carrier reports the injury to the DWC. Failure to report injuries may result in fines being assessed against non-complying employers.

8. Do make sure the treating physician and your carrier are familiar with the return to work strategies you have implemented.

### **B. Do's & Don'ts for Employees Who are Injured**

1. Don't forget to report every injury to your supervisor as soon as possible after the injury occurs.

2. Don't believe there are instant cures for aches and pains from injuries. Most injuries take time to heal. In the meantime, the worker should be as active as the physician recommends.

3. Don't refuse suitable employment because you believe that taking a job will hurt your compensation claim. An Administrative Law Judge will decide the claim based upon evidence of what you are capable of doing. Continued unemployment may be given little weight.

4. Don't believe that every on the job injury causes disability and entitles the worker to disability benefits. Temporary benefits are to be paid while the employee is recovering from an injury and unable to work. Permanent benefits are generally available only to workers who have lost some of their ability to earn wages.

5. Don't believe that workers compensation benefits are a substitute for a paycheck. Disability payments are always less than the worker's average wage and will not be raised in the future to account for inflation. A long period of unemployment may reduce Social Security Retirement Benefits, and could lead to loss of health care coverage.

6. Don't sign any document concerning workers compensation that you do not understand. Doing so may result in a loss of the benefits to which you are entitled under the Workers Compensation Act.

7. Do cooperate with your employer, physician, and insurance carrier representatives. A cooperative attitude is likely to speed the delivery of benefits and your physical recovery.

8. Do carefully choose a reputable physician to treat your injury and follow that physician's advice. Ask your physician to report your status to your employer and the insurance carrier promptly. Timely reporting will speed payment of benefits when appropriate and enable your employer and physician to assist you in getting back to work.

9. Do call a Department of Workers Claims ombudsman if you believe you are being treated unfairly regarding a workers compensation matter.

## **11. Ombudsman**

The Office of the Ombudsman assists citizens in workers compensation matters by answering questions and attempting to

resolve conflicts. In addition, inquiries regarding coverage and reports of illegal activities should be made to the Office of the Ombudsman. The toll free number for this office is 1-800-554-8601.

## **RELATIONSHIP BETWEEN WORK AND INJURY**

### **12. Definition of Injury**

The purpose of workers compensation is to provide benefits for workplace injuries and occupational diseases. An injury is not confined to a sudden accident, but includes "any work-related harmful change in the human organism." Occupational diseases as well as injuries resulting from minor trauma inflicted over a long period of time are covered. A physician's opinion is usually required to establish that an injury or disease is related to work.

### **13. Occupational Disease**

An occupational disease is a condition caused by an exposure to a hazard in the workplace. The employer where the worker was last exposed to the hazards of the disease is responsible for payment of benefits.

The most common occupational disease in Kentucky is coal workers' pneumoconiosis (black lung). This disease results from breathing coal dust. Black lung claims are subject to special statutory rules.

### **14. Relationship to Work**

An injury must be caused by the employee's work in order to be compensable. Common legal phrases used to describe this requirement are that the injury is "work-related" or that it "arises out of and in the course of employment."

An employee is entitled to benefits if injured while performing normal duties during regular working hours. Difficult questions of

compensability arise if the employee is injured in circumstances not typical of the normal working environment in terms of time, place or performance of duties. Workers compensation is generally not allowed for injuries due to horseplay, intentional infliction of harm, intoxication, and in travel to and from work.

## **15. No Fault System - Safety Laws**

Although benefits are granted irrespective of an employee's fault or carelessness in causing an accident, disability payments will be reduced by 15% if the injury was caused by the worker's intentional violation of a safety law or regulation. Likewise, if the employer intentionally violated a safety law or regulation which produced the injury, income benefits will be increased.

## **BENEFITS FOR LOST EARNINGS**

### **16. Definition of Disability**

The majority of workplace injuries do not result in the payment of lost wages under the Workers Compensation Act. Most job accidents are classified as "no lost time." Injured employees usually obtain whatever medical treatment is required for minor injuries and promptly return to the job. Income benefits are only paid during periods of "disability."

For workers compensation purposes "disability" only occurs where there is a loss of the employee's power to earn money. Factors which are taken into account in determining the extent of disability include the employee's age, education, work experience; physical effects of the injury; availability of work to the injured employee; earnings before and after the injury; and the amount of functional impairment as rated under guidelines prepared by the American Medical Association.

There are two types of disability. The first is known as total disability and may be either temporary or permanent. The other type of disability is permanent partial disability.

## **17. Total Disability**

### **A. Temporary Benefits**

Temporary total disability benefits (TTD) are paid during the period in which the worker is recovering from an injury or disease and is unable to work. TTD is not payable unless the employee is unable to work for more than seven (7) days. There is no allowance for temporary partial disability benefits in Kentucky.

Disability is total when the employee is unable to work at any job for which the employee is qualified. In most instances of severe injury, TTD benefits are voluntarily paid. Payment of TTD is stopped when the employee recovers sufficiently to return to work. This usually occurs when a physician has issued a medical release, regardless of whether the employee has actually returned to the job.

Total disability is temporary when the employee is recovering from the injury and is expected to improve. TTD payments are stopped when maximum medical improvement (MMI) has been reached. Maximum medical improvement means that the physical condition of the worker has stabilized.

### **B. Permanent Benefits**

Permanent total disability benefits are paid if the worker remains so incapacitated that it is unreasonable to expect that individual to obtain and keep any regular employment. These benefits are awarded after the worker reaches maximum medical improvement. The fact that an employee has not returned to work after an injury does not require a finding of permanent total disability.

Except in cases of severe injury, employers usually do not agree to pay permanent total disability benefits. It is often necessary to litigate these claims before an Administrative Law Judge. Once made, an award of permanent total disability benefits can be reopened to reduce the benefits if it is shown that the worker has recovered sufficiently to return to work.

## **18. Permanent Partial Disability**

Permanent partial disability benefits are paid to a worker for the partial destruction of the power to earn money. The term “permanent” refers to a physical disability expected to last into the future. However, the use of the word “permanent” in describing the period of payment is misleading. For injuries occurring on or after April 4, 1994, payment is limited to a period of 425 weeks for partial disability of 50% or less, and to 520 weeks for partial disability exceeding 50%. Prior to that time, all permanent partial disability benefits were payable for a maximum of 425 weeks.

Permanent partial disability is further limited for injuries occurring on or after April 4, 1994. The percentage awarded is restricted to the degree of functional impairment assigned by physicians if the injured worker returns to work at wages equal to or greater than those earned at the time of injury. In special cases, permanent partial disability benefits may be increased to a maximum of twice the functional impairment if the worker establishes a greater percentage of disability. If an individual is not able to return to work or returns at a lower wage, the percentage of permanent partial disability is not limited to the functional impairment rating assigned by the physicians.

## **19. Calculation of Benefits**

### **A. Average Weekly Wage**

The amount of disability benefits is dependent upon the average weekly wage (AWW) of the employee and the extent of disability reflected in a percentage. The statute provides benefits in proportion to lost wages. A number of special rules govern the calculation of the average weekly wage. However, in most instances an employee’s average weekly wage is calculated by using the highest calendar quarter of earnings during the year preceding the injury with the employer where the injury occurred. Total earnings for the highest quarter are divided by thirteen (13) and the result is the

employee's average weekly wage. Overtime is included, but only at regular hourly rates.

### **B. Total Disability**

Weekly benefits for total disability are two-thirds ( $2/3$ ) of the average weekly wage up to the maximum state average weekly wage. The maximum allowable weekly benefit is \$415.94 for injuries occurring in 1994-1996. This ceiling for total disability benefits comes into play only if the average weekly wage of the worker exceeds \$623.91 per week. The minimum benefit for total disability is 20% of the state average weekly wage - \$83.19 for injuries occurring in 1994-1996. Benefits are paid as long as total disability continues.

### **C. Permanent Partial Disability**

The weekly benefit for permanent partial disability is two-thirds ( $2/3$ ) of the employee's average weekly wage (subject to a statutory maximum) multiplied by the extent of the disability. There is no minimum benefit. The maximum benefit for permanent partial disability is 75% of the state average weekly wage - \$311.96 for 1994-1996.

### **D. Settlement**

Most contested claims are settled during proceedings before an ALJ. Settlements must be approved by an ALJ. Settlements often include payment of a lump sum instead of weekly benefits. Usually this involves discounting for the immediate value of future payments. Unless expressly stated, settlement does not release the employer from the obligation to pay future medical expenses for the injury.

### **E. Benefit Reduction at Age 65**

For injuries occurring after April 4, 1994, (to workers younger than 65) income benefits are reduced when the employee reaches

age 65. Payment is reduced by 10% for each year beginning with age 65 and extending through age 70. At the end of this “tier-down” of benefits, the employee retains 40% of the original award.

## **F. Involuntary Termination**

Benefits may be terminated even if the employee remains disabled because of an unreasonable refusal to receive medical treatment. Benefits may also be terminated when a worker refuses to accept suitable employment, fails to appear for a medical examination scheduled on behalf of the employer, or refuses to be questioned by representatives of the employer at a deposition or hearing.

## **G. Black Lung Benefits**

For Kentucky workers compensation purposes, determination of the presence of “black lung” is made by x-ray interpretation of the lungs. The extent of benefits for black lung is dependent upon the x-ray classification of the disease (category 1, 2, or 3) and the amount of breathing impairment attributed to black lung.

A miner with category 1 black lung who has no respiratory impairment is entitled to retraining incentive benefits (RIB). This one time benefit is equal to 50% of the permanent partial disability rate payable over 208 weeks. RIB benefits are payable for working miners only as reimbursement of expenses in attending an approved job training program. Benefits are paid directly to miners who leave the mining industry through no fault of their own.

Respiratory impairment is determined by breathing tests administered by a physician using the forced vital capacity test (FVC) and the forced expiratory volume in one second test (FEV1). An individual who is determined to have category 1 black lung with spirometric tests values of 55%-79% of predicted normal values will be determined to be 75% occupationally disabled. Any respiratory impairment must result in some part from exposure to coal dust.



An individual determined to have category 1 black lung with breathing capacity of less than 55% of predicted normal values, category 2 black lung or category 3 black lung is presumed to be totally disabled. In these circumstances, benefits are paid for permanent total disability.

## **REOPENING**

A settlement or judgment in civil court usually prevents any further action involving the claim. Unlike a civil suit, a final settlement or award in workers compensation is generally subject to a "motion to reopen" for further proceedings. Grounds for reopening include a change in physical condition, mistake, fraud or newly-discovered evidence. Reopening can result in an increase or reduction in benefits.

## **MEDICAL CARE**

### **20. General Provisions**

Kentucky employers are required to pay medical expenses incurred by employees for treatment of work-related injuries. This includes the services of medical doctors, chiropractors, hospitals, and other licensed providers. An employer is liable only for reasonable and necessary services.

Medical charges are subject to medical fee schedules adopted by the DWC. If charges are greater than permitted by the schedule, payment will be reduced to the allowable charge. Bills are to be paid within thirty (30) days after presentation by the medical provider. The medical provider is to bill the employer or its insurer within forty-five (45) days of the date the service was rendered.

It is unlawful to require an employee to make a co-payment for treatment of a work injury or occupational disease. Likewise, the medical provider may not engage in "balance billing" by charging

the worker separately for any amount in excess of that approved in the medical fee schedule.

An employee is granted the right to choose a treating physician who may be a physician, surgeon, psychologist, optometrist, dentist, podiatrist, osteopath, or chiropractor. This primary or “gatekeeper” physician is responsible for referring the employee to other medical providers as necessary. The employee has the one time right to change the “gatekeeper” physician. Additional changes may require the approval of an ALJ.

## **21. Managed Care**

Managed care has been authorized for the treatment of work injuries and diseases since April 4, 1994. Employees subject to managed care plans are required to choose “gatekeeper” physicians from the managed care plan network.

A managed care organization must meet standards established by the DWC. Managed care programs must have sufficient speciality providers to treat common work-related conditions. If surgery is recommended by a plan physician, the worker may obtain a second opinion from an outside physician. Workers may also obtain medical services outside the managed care network in emergencies.

## **VOCATIONAL REHABILITATION**

An injured employee may be entitled to vocational rehabilitation if an injury prevents return to suitable work. Rehabilitation will include an evaluation to determine the feasibility of retraining. Most efforts in rehabilitation are aimed at returning the individual to work performed in the past. Retraining will generally not exceed fifty-two (52) weeks. The cost will be paid by the employer.

If an employee who has been awarded permanent total disability participates in a rehabilitation program under order of an

ALJ, the weekly benefit is increased to 80% percent of the average weekly wage (subject to the state maximum) during retraining.

## **DEATH BENEFITS**

When an employee dies from a work-related injury a burial expense of \$4,000.00 is paid. In addition, income benefits are paid to dependents. The amount of benefits is contingent upon the number of dependents and their relationship to the deceased employee. A single payment of \$10,000.00, less any previous income benefit, is paid to the estate if there are no dependents. The Act also provides for continued payment of awards to dependents when a disabled worker dies before an award is fully paid.

## **TIME LIMITS FOR CLAIMS**

Employees are required to comply with two (2) time requirements to preserve rights under the Workers Compensation Act. First, the employee is to provide notice of the accident to the employer "as soon as practicable." Secondly, a formal written claim must be filed with the DWC within statutorily declared periods of time. Different periods of limitations apply to claims for injury and occupational disease. Failure to timely report an injury or file a claim will result in the loss of all future benefits.

### **22. Notice to Employer**

An employee should immediately notify a supervisor of any injury. Most employers have a written policy as to reporting injuries. That policy should be followed to the extent possible under the circumstances.

A claim may involve an occupational disease or injury not readily apparent as being caused by work. Notice should be given to the employer as soon as the employee learns of a condition which may be work-related. Often knowledge of the claim is acquired when the employee is told of the work connection by a physician.

## **23. Filing a Claim**

If an injury claim by an employee is not satisfactorily resolved with the employer or its insurance carrier, a written claim must be filed with the DWC within two (2) years of the date of injury or last payment of temporary total disability benefits, whichever is later. Payment of medical expenses does not extend the time for filing.

Occupational disease claims must be filed with the DWC within three (3) years after diagnosis or after symptoms first appear which are sufficient to apprise the employee of the disease, whichever is earlier. A claim may also be filed within three (3) years after death caused by an occupational disease. The maximum period to file most occupational disease claims is five (5) years after the employee was last exposed to the occupational hazard .

Special rules apply to conditions related to the human immunodeficiency virus (AIDS), asbestos and radiation. AIDS claims must be filed within five (5) years after exposure to the virus. The time to file a claim involving an asbestos or radiation related disease is twenty (20) years after last exposure.

## **LITIGATION PROCEDURES**

Claims must be timely filed on approved forms which are available at no cost from the DWC. These include Form 101- Application for Adjustment of Injury Claim, Form 102 - Application for Adjustment of an Occupational Disease Claim, and Form 103 - Application for Retraining Incentive Benefits. While an individual has the right to pursue a claim without an attorney, laypersons are held to the same procedural standards as attorneys.

A prehearing conference will be set by order issued about a month after an injury claim is filed. The parties will receive a scheduling order which establishes the date and location of the prehearing conference and the name of the presiding ALJ. Normally, prehearing conferences are held about five months after the claim is

filed. Thirteen sites are maintained for hearings and prehearing conferences. A claim is assigned to the hearing site that is closest to the residence of the injured employee.

A prehearing conference is not immediately scheduled on claims for occupational disease or retraining incentive benefits. The employer is given the opportunity to file a Notice of Resistance. An award is entered in favor of the employee if a Notice of Resistance is not filed by the employer. If the claim is resisted, a prehearing conference is then scheduled.

Parties produce evidence for presentation to the ALJ by deposition and medical report prior to the prehearing conference. Generally, the worker is questioned under oath about the circumstances of the accident, medical treatment, work history and the effects of the injury upon the employee's ability to work.

At the prehearing conference, the ALJ will discuss the possibility of settlement. Through stipulations, the parties will agree on as many issues as possible leaving only "contested" issues to be decided by the ALJ. If the parties are unable to resolve the claim at the prehearing conference, the ALJ will schedule a hearing.

All testimony at the hearing will be recorded by a court reporter. At the conclusion of the hearing, the ALJ may either render an immediate decision, or submit the matter for decision after the parties file written arguments. Kentucky law requires an ALJ to render a decision within sixty (60) days of the hearing except in unusual circumstances. The final decision will be in written form.

At the time of this printing, the DWC is developing a pilot mediation program. Mediation conferences will be conducted shortly after the filing of a claim and will provide an opportunity to resolve the claim without the necessity of incurring costs associated with full blown litigation. It is hoped that mediation will result in earlier settlement of claims, the return of more employees to their jobs, and prompt initiation of new job training where that is necessary.

## APPEALS

A final decision of the ALJ may be appealed to the Workers Compensation Board (WCB) within thirty (30) days. No new evidence will be considered. If the ALJ was presented with conflicting evidence, the decision will be upheld if any portion of the evidence supports it. The WCB is authorized to make independent determination of legal issues which were initially presented to the ALJ.

Appeal from the WCB will take a case into the Kentucky appellate courts. The courts give deference to the decisions of the WCB and will support those decisions unless there has been a significant misinterpretation of the law.

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